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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

MARIO DEON DULANEY,

Defendant and Appellant.

F072204

(Fresno Super. Ct. No. F13904091)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Fresno County. Alvin M. Harrell III, Judge.

Jim H. Kim, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the State Attorney General, Sacramento, California, for Plaintiff and Respondent.

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* Before Levy, Acting P.J., Poochigian, J., and Peña, J.

INTRODUCTION

After his motion to suppress evidence was denied, appellant Mario Deon Dulaney pled no contest to being a felon in possession of a firearm, a violation of Penal Code section 29800, subdivision (a)(1), and admitted two prior strikes. Dulaney appeals, contending the trial court erred in denying the motion to suppress. Appellate counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 346. We affirm.

FACTUAL AND PROCEDURAL SUMMARY

A hearing on Dulaney's motion to suppress was held on December 20, 2013. Officer Michael Neveu testified that on November 18, 2012, he and his partner were dispatched to an apartment complex to investigate a report of a woman dragging a screaming child down the street and up to an apartment. Neveu and his partner made contact with the woman at the apartment at 2:11 p.m.; Neveu's partner took the child to the parking lot to talk, while Neveu spoke with the woman at the apartment.

Neveu noticed that the doors and windows of the apartments in the complex had been boarded up with plywood; the plywood was attached with heavy-duty screws so as to prevent ingress and egress. The only apartment not boarded up with plywood was the one occupied by the woman with whom Neveu was speaking. The apartments had "No occupancy" letters posted on them.

As Neveu was talking with the woman at her front door, he noticed a man backing out of a nearby apartment; the man pushed the plywood aside and came out the door. The man was holding an 18- by 10-inch case. He spotted Neveu, looked surprised, and turned pale. Neveu believed the male to be a trespasser, possibly engaged in a burglary; he told the man to sit down on the stairs and that he would be with him shortly.

Neveu was trying to finish his conversation with the woman, when another man, Dulaney, came out of the same apartment. Neveu told Dulaney to stop and sit down and that he would be with Dulaney in "a minute." Neveu testified the first male came out of

the apartment about two minutes after he made contact with the woman at her apartment; Dulaney came out about one minute after the first male.

Dulaney ran away from Neveu at about 2:15 p.m., Neveu ordered Dulaney to stop; Dulaney continued running and Neveu pursued him in the patrol car. Dulaney was located and handcuffed. Dulaney's backpack was searched and hollow-point bullets and a .22-caliber semi-automatic rifle, with a barrel less than the 16-inch legal minimum, were found in the backpack.

Dulaney was charged with multiple offenses. Dulaney filed a written motion to suppress the evidence, contending he had been unlawfully detained and the detention was prolonged. The People filed a written opposition to the motion.

At the December 20, 2013 hearing on the motion, the trial court heard testimony and accepted argument. At the conclusion of argument, the trial court found Neveu's testimony to be credible; there was reasonable suspicion to detain Dulaney; and the detention was not prolonged, finding that Dulaney sat for about "a minute" before leaving. The trial court denied the motion.

Subsequently, Dulaney pled no contest to being a felon in possession of a firearm and admitted having two prior strikes. Pursuant to *People v. Vargas* (2014) 59 Cal.4th 635, the parties agreed that Dulaney's two prior strikes would be treated as one for purposes of sentencing, because they arose from a single act. The trial court sentenced Dulaney to the mid-term of two years, doubled, on September 11, 2014. Various fines and fees were imposed.

Dulaney filed a notice of appeal on August 24, 2015, stating the appeal was from a denial of a motion to suppress. In case number F071199, this court directed that the notice of appeal be deemed timely filed.

DISCUSSION

Appellate counsel was appointed October 1, 2015. On January 13, 2016, counsel filed a brief pursuant to *People v. Wende, supra*, 25 Cal.3d at p. 346 and this court issued its letter to Dulaney notifying him of the right to file a supplemental brief. No supplemental brief was filed.

In reviewing a trial court's ruling on a motion to suppress, we defer to the trial court's factual findings if supported by substantial evidence; we exercise independent judgment to determine whether, on the facts so found, the search or seizure was reasonable. (*People v. Glaser* (1995) 11 Cal.4th 354, 362.)

Here, the evidence supports the trial court's factual findings that Neveu had a reasonable suspicion to detain Dulaney, in that Dulaney came out of an apartment that had been boarded up and marked no occupancy, carrying a backpack. As Neveu testified, at the very least Dulaney was trespassing. Neveu testified to specific, articulable facts that, under the totality of the circumstances, gave rise to a reasonable suspicion that Dulaney was engaged in criminal activity. (*People v. Hernandez* (2008) 45 Cal.4th 295, 299.)

The evidence also supports the trial court's finding that the detention was not unduly prolonged. Neveu began speaking with the woman around 2:11 p.m.; Dulaney came out of the apartment about three minutes later; Dulaney fled about one minute after being told to stop, sit, and wait for Neveu to speak with him. Whether a detention is unduly prolonged is determined on the facts of each case. (*People v. Celis* (2004) 33 Cal.4th 667, 674-675.) A period of approximately one minute, or even two or three, is not unduly prolonged, under the circumstances. (*Ibid.*)

On the facts of this case, the search and seizure was reasonable and not a violation of the Fourth Amendment. (*People v. Glaser, supra*, 11 Cal.4th at p. 362.)

After an independent review of the record, we find that no reasonably arguable factual or legal issues exist.

DISPOSITION

The judgment is affirmed.